

FILED
UNITED STATES DISTRICT COURT IN CLERKS OFFICE
DISTRICT OF MASSACHUSETTS

2005 JAN 27 P 2: 05

DENNIS SENA,

Plaintiff

v.

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,
RICHARD SULLIVAN and
JOHN DOES 1-10,

Defendants

U.S. DISTRICT COURT
DISTRICT OF MASS

CIVIL ACTION NO. 04-12019-EFH

ANSWER OF MBTA DEFENDANTS

Defendants Massachusetts Bay Transportation Authority ("MBTA"), Richard Sullivan ("Sullivan") and John Does 1-10 ("Does 1-10") (all defendants may hereinafter be collectively referred to as the "MBTA Defendants") hereby answer the Complaint (the "Complaint") of Plaintiff Dennis Sena ("Sena"), as follows:

PARTIES

1. The MBTA Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.
2. The MBTA Defendants admit the allegations contained in paragraph 2 of the Complaint.
3. The MBTA Defendants admit the allegations contained in paragraph 3 of the Complaint.
4. The MBTA Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.
5. The MBTA Defendants admit the allegations contained in paragraph 5 of the Complaint as they pertain to Sullivan. The MBTA Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint as they pertain to Does 1-10.

JURISDICTION AND VENUE

6. The MBTA Defendants admit the allegations contained in paragraph 6 of the Complaint.

7. The MBTA Defendants admit the allegations contained in paragraph 7 of the Complaint.

GENERAL ALLEGATIONS

8. The MBTA Defendants admit the allegations contained in paragraph 8 of the Complaint.
9. The MBTA Defendants admit the allegations contained in paragraph 9 of the Complaint.
10. The MBTA Defendants deny the allegations contained in paragraph 10 of the Complaint.
11. The MBTA Defendants deny the allegations contained in paragraph 11 of the Complaint.
12. The MBTA Defendants deny the allegations contained in paragraph 12 of the Complaint.
13. The MBTA Defendants admit the allegations contained in paragraph 13 of the Complaint.
14. The MBTA Defendants deny the allegations contained in paragraph 14 of the Complaint.
15. The MBTA Defendants deny the allegations contained in paragraph 15 of the Complaint.
16. The MBTA Defendants deny the allegations contained in paragraph 16 of the Complaint.

COUNT I (Federal Civil Rights Claim)(v. MBTA)

17. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 16 of the Complaint.
18. The MBTA Defendants deny the allegations contained in paragraph 18 of the Complaint.
19. The MBTA Defendants deny the allegations contained in paragraph 19 of the Complaint.

COUNT II (State Civil Rights Claim)(v. MBTA)

20. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 19 of the Complaint.
21. The MBTA Defendants deny the allegations contained in paragraph 21 of the Complaint.
22. The MBTA Defendants deny the allegations contained in paragraph 22 of the Complaint.

COUNT III (Negligent Infliction of Emotional Distress)(v. MBTA)

23. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 22 of the Complaint.

- 24. The MBTA Defendants deny the allegations contained in paragraph 24 of the Complaint.
- 25. The MBTA Defendants deny the allegations contained in paragraph 25 of the Complaint.

COUNT IV (Intentional Infliction of Emotional Distress)(v. MBTA)

- 26. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 25 of the Complaint.
- 27. The MBTA Defendants deny the allegations contained in paragraph 27 of the Complaint.
- 28. The MBTA Defendants deny the allegations contained in paragraph 28 of the Complaint.
- 29. The MBTA Defendants deny the allegations contained in paragraph 29 of the Complaint.
- 30. The MBTA Defendants deny the allegations contained in paragraph 30 of the Complaint.

COUNT V (Assault)(v. MBTA)

- 31. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 30 of the Complaint.
- 32. The MBTA Defendants deny the allegations contained in paragraph 32 of the Complaint.
- 33. The MBTA Defendants deny the allegations contained in paragraph 33 of the Complaint.

COUNT VI (Battery)(v. MBTA)

- 34. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 33 of the Complaint.
- 35. The MBTA Defendants deny the allegations contained in paragraph 35 of the Complaint.
- 36. The MBTA Defendants deny the allegations contained in paragraph 36 of the Complaint.

COUNT VII (Negligence)(v. MBTA)

- 37. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 36 of the Complaint.
- 38. The MBTA Defendants admit that Sena is owed a duty of care as established by law, and deny the allegations to the extent that they suggest a higher standard of care or that the MBTA violated any standard of care with respect to Sena.
- 39. The MBTA Defendants deny the allegations contained in paragraph 39 of the Complaint.

40. The MBTA Defendants deny the allegations contained in paragraph 40 of the Complaint.

41. The MBTA Defendants deny the allegations contained in paragraph 41 of the Complaint.

COUNT VIII (Federal Civil Rights Claim)(v. Sullivan)

42. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 41 of the Complaint.

43. The MBTA Defendants deny the allegations contained in paragraph 43 of the Complaint.

44. The MBTA Defendants deny the allegations contained in paragraph 44 of the Complaint.

COUNT IX (State Civil Rights Claim)(v. Sullivan)

45. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 44 of the Complaint.

46. The MBTA Defendants deny the allegations contained in paragraph 46 of the Complaint.

47. The MBTA Defendants deny the allegations contained in paragraph 47 of the Complaint.

COUNT X (Negligent Infliction of Emotional Distress)(v. Sullivan)

48. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 47 of the Complaint.

49. The MBTA Defendants deny the allegations contained in paragraph 49 of the Complaint.

50. The MBTA Defendants deny the allegations contained in paragraph 50 of the Complaint.

COUNT XI (Intentional Infliction of Emotional Distress)(v. Sullivan)

51. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 40 of the Complaint.

52. The MBTA Defendants deny the allegations contained in paragraph 52 of the Complaint.

53. The MBTA Defendants deny the allegations contained in paragraph 53 of the Complaint.

54. The MBTA Defendants deny the allegations contained in paragraph 54 of the Complaint.

55. The MBTA Defendants deny the allegations contained in paragraph 55 of the Complaint.

COUNT XII (Civil Assault)(v. Sullivan)

- 56. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 55 of the Complaint.
- 57. The MBTA Defendants deny the allegations contained in paragraph 57 of the Complaint.
- 58. The MBTA Defendants deny the allegations contained in paragraph 58 of the Complaint.

COUNT XIII (Battery)(v. Sullivan)

- 59. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 58 of the Complaint.
- 60. The MBTA Defendants deny the allegations contained in paragraph 60 of the Complaint.
- 61. The MBTA Defendants deny the allegations contained in paragraph 61 of the Complaint.

COUNT XIV (Negligence)(v. Sullivan)

- 62. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 61 of the Complaint.
- 63. The MBTA Defendants admit that Sullivan owed a duty of care to plaintiff as established by law, but deny that any such duty of care was breached by Sullivan
- 64. The MBTA Defendants deny the allegations contained in paragraph 64 of the Complaint.
- 65. The MBTA Defendants deny the allegations contained in paragraph 65 of the Complaint.
- 66. The MBTA Defendants deny the allegations contained in paragraph 66 of the Complaint.

COUNT XV (Federal Civil Rights Claim)(v. Does 1-10)

- 67. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 66 of the Complaint.
- 68. The MBTA Defendants deny the allegations contained in paragraph 68 of the Complaint.
- 69. The MBTA Defendants deny the allegations contained in paragraph 69 of the Complaint.

COUNT XVI (Massachusetts Civil Rights Claim)(v. Does 1-10)

- 70. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 69 of the Complaint.

71. The MBTA Defendants deny the allegations contained in paragraph 71 of the Complaint.

72. The MBTA Defendants deny the allegations contained in paragraph 72 of the Complaint.

COUNT XVII (Negligent Infliction of Emotional Distress)(v. Does 1-10)

73. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 72 of the Complaint.

74. The MBTA Defendants deny the allegations contained in paragraph 74 of the Complaint.

75. The MBTA Defendants deny the allegations contained in paragraph 75 of the Complaint.

COUNT XVIII (Intentional Infliction of Emotional Distress)(v. Does 1-10)

76. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 75 of the Complaint.

77. The MBTA Defendants deny the allegations contained in paragraph 77 of the Complaint.

78. The MBTA Defendants deny the allegations contained in paragraph 78 of the Complaint.

79. The MBTA Defendants deny the allegations contained in paragraph 79 of the Complaint.

80. The MBTA Defendants deny the allegations contained in paragraph 80 of the Complaint.

COUNT XIX (Negligence)(v. Does 1-10)

81. The MBTA Defendants repeat and reallege and incorporate herein by reference their answers to paragraphs 1 through 80 of the Complaint.

82. The MBTA Defendants deny the allegations contained in paragraph 82 of the Complaint.

83. The MBTA Defendants deny the allegations contained in paragraph 83 of the Complaint.

84. The MBTA Defendants deny the allegations contained in paragraph 84 of the Complaint.

85. The MBTA Defendants deny the allegations contained in paragraph 85 of the Complaint.

ADDITIONAL DEFENSES

1. The Plaintiff's Complaint fails to state a claim upon which relief may be granted.

2. Plaintiff's claims are barred by the applicable Statute of Limitations.

3. Plaintiff's claims against the MBTA are barred because the MBTA cannot be held responsible under the theory of respondeat superior for civil rights violations.
4. To the extent that the Complaint states valid claims for negligence, Plaintiff's claims are barred by his own comparative negligence.
5. The Plaintiff's Complaint is barred because the actions of the Defendants were justified.
6. The Plaintiff's Complaint is barred because the actions of the Defendants were privileged.
7. The Plaintiff's Complaint is barred because the MBTA Defendants' actions were protected by qualified immunity.

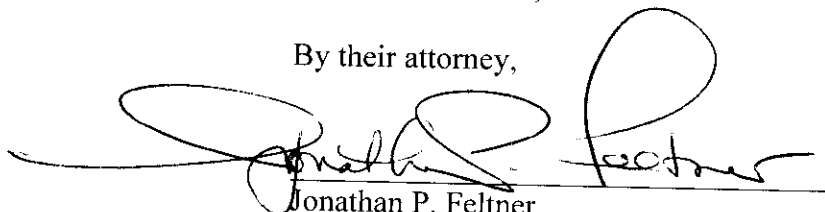
WHEREFORE, the MBTA Defendants respectfully request as follows:

1. That Plaintiff's Complaint be dismissed with prejudice and judgment entered for the Defendants;
2. That the MBTA Defendants be awarded their costs and attorneys fees; and
3. That the Court order such other and further relief as deemed appropriate.

MBTA DEFENDANTS DEMAND A TRIAL BY JURY.

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,
RICHARD SULLIVAN and
JOHN DOES 1-10,

By their attorney,

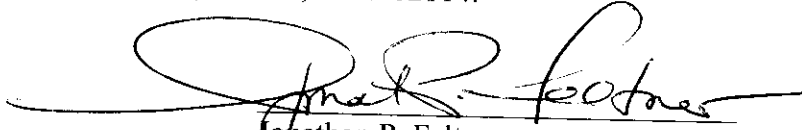
A handwritten signature in black ink, appearing to read 'Jonathan P. Feltner', is written over a horizontal line.

Jonathan P. Feltner
BBO #162560
MBTA Law Department
Ten Park Plaza
Boston, MA. 02116
(617) 222-3175

Dated: January 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a copy of the foregoing Answer of MBTA Defendants to Complaint and Motion of MBTA Defendants for Judgment on the Pleadings by mailing the same postage prepaid, first class mail, this day to Jeffrey A. Denner, Esq., Denner & O'Malley, LLP, 4 Longfellow Place, 35th Floor, Boston, MA. 02114.



Jonathan P. Feltner

Dated: January 25, 2005